MAJOR RULINGS OF THE PRESIDENT OF THE SENATE 2007 SESSION

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Amending House Bill Titles In The Senate

"Senator Honeyford has raised two related questions on the striking amendment to House Bill 1187: First, he asks whether it is appropriate for the Senate to substantively amend the title of a House Bill; and second, he asks whether the proposed amendment is beyond the scope and object of the underlying bill.

As to the first question, the President takes note of the fact that House rules and practice differ from those of the Senate with respect to title amendments, and it is probably fair to characterize the House's rules as stricter with respect to such amendments. That said, in the interest of comity and promoting good relations between the chambers, the President generally does not rule on matters of procedure within the House. Our rules allow for title amendments, and this body may make such amendments if it chooses. The body may be well-advised, of course, to take note of House practice and traditions in making such choices, but these are matters of negotiation and policy, not Senate procedure.

On the second question, relating to whether the striking amendment goes beyond the scope and object of the underlying bill, the President begins by taking a look at the measure in the form in which it originally came over from the House. In this case, the measure can be fairly characterized as a purely technical recodification of affordable housing statutes. There are no substantive provisions of law changed or enacted beyond this. By contrast, the striking amendment includes very substantive law allowing local governments to set up relocation assistance programs. It includes monetary amounts, notice provisions, language on condominium moratoriums, lease termination provisions, and limitations on interior construction. This language goes well beyond recodifying affordable housing statutes and is clearly outside the subject matter of the underlying bill as it came over from the House

For these reasons, Senator Honeyford's second point is well-taken, and the amendment is beyond the scope and object of the underlying bill." (April 9, 2007).

Dogs In Bars

"In ruling upon the point of order raised by Senator Brown that Amendment 208 is outside the scope and object of the underlying bill, the President finds and rules as follows.

The underlying bill establishes a spirits, beer and wine nightlife liquor license. The amendment at issue would allow certain dogs in certain liquor-serving establishments. Beyond a common reference to liquor, the amendment and bill share nothing in common, as the sections of code, departments charged with implementation, and subject matter differ greatly.

For these reasons, Amendment 208 is beyond the scope and object of the underlying bill and Senator Brown's point is well-taken." (March 10, 2007).

Gambling: Removing Sunset Clause Is An Expansion

"In ruling upon the inquiry raised by Senator Fairley as to whether or not House Bill 1291 is an expansion of gambling that requires a sixty percent vote under Article II, Section 24 of the Washington Constitution, the President finds and rules as follows:

In 2004, the Legislature enacted provisions of law relating to advance deposit wagering. Regardless of whether a point of order was requested on this bill at the time or not, such an action was clearly an expansion of gambling which would take a sixty percent vote. This law included a sunset clause, under which the act would end as of October 1, 2007.

The measure before us is very simple, as it contains only one line of substantive law, and this line deletes the sunset clause. In effect, this changes what was an authorization for advance deposit wagering for a limited time into an authorization of unlimited, or at least indeterminate, duration. Were the act to expire as present law requires, and were the body to then come back with a bill reinstituting these provisions, such an act would undoubtedly take—as did the original measure passed in 2004—a sixty percent vote. It is axiomatic, then, that a measure which removes the sunset clause expands gambling from a limited period of time to an unlimited period of time likewise takes a sixty percent vote.

For these reasons, the President responds to Senator Fairley's inquiry by ruling that a sixty percent vote of this body, 30 votes, will be needed for final passage." (April 4, 2007).

I-601: Converting Fee to Tax Takes 2/3 Vote

"Senator Schoesler has raised the question as to whether Substitute Senate Bill 5080 takes a simple majority or a two-thirds vote on final passage, because it implicates provisions of the law commonly referred to as Initiative 601. The President believes this is an important issue and wants to be clear in his explanation, and therefore asks for the body's patience as he issues this ruling.

The workings of the statutes enacted by I-601 are complex, made more complex by various amendments to the original law enacted by the Legislature over the years. At its heart, though, one of the primary limitations in this collective law is clear: The legislature may not take action which raises state revenue unless the enacting legislation is passed with a two-thirds vote of the Senate.

The key to this ruling, as with many of the President's past rulings, is whether or not the measure before us raises state revenue. The President has a long history of differentiating between taxes and fees when making this analysis. In general, enacting a tax increase requires a supermajority vote, while enacting a fee takes only a simply majority vote. The President has taken guidance from Article VIII, Section 1(c) of our state Constitution in making this determination. In short, a fee is collected for a specific, limited purpose. It is often placed into a specific account. This narrow nexus between the collection of the money and its limitation on being spent for a specific purpose is crucial in classifying a revenue action as a fee and not a more general tax. By contrast, where there is not a specific connection between the collection of money and a limitation as to the purpose for which it will be spent, it is more likely that the revenue action is a tax. In making this analysis, the accounts into which fees are placed are important, but not controlling; more important is the limitation on the funds. The President does believe that the interplay between various accounts is far more controlling with respect to transfers, rainy day funds, and expenditure limits, but not for making the initial determination as to whether the revenue action is a fee or tax increase in the first place. A careful review of all of the President's past rulings will show this to be the overriding factor, and, while the President has never specifically ruled on the matter before us, this ruling is consistent with and continues past precedent.

Applying this analysis to the matter before the body, the President believes a brief recitation of the bill's background is helpful. The waste tire fee is not new to this body or enacted by this bill. As originally implemented, there was a solid nexus between the fee collected and the purpose for which the proceeds could be spent: $1 per tire sold was collected, placed into a dedicated account, and the proceeds were limited to waste tire clean-up and prevention. Under this bill, the amount collected would be unchanged, but its distribution is significantly altered. While half of the money would essentially be deposited and spent as before, the other half would be placed into a more general account, with the only limitation being that it be spent for transportation purposes. And, in 2010, this bill would direct that all of the money would be placed into this more general account, with only the more general limitation. In so doing, the President believes the bill would convert a dedicated fee—which is not subject to I-601's supermajority provisions—into a general tax.

For these reasons, Senator Schoesler's point is well-taken, and passage of this bill will require a two-thirds vote of this body." (March 9, 2007).

I-601: Nexus Between Purpose & Revenue

"Senator Oemig has raised a question as to whether Substitute Senate Bill 5797, as amended, takes a simple majority or a two-thirds vote of this body on final passage, because it implicates provisions of the law commonly referred to as Initiative 601. This is an important issue, and the President thanks the members in advance for their patience as he sets forth his analysis.

The President believes that this is another case where the difference between a state action that raises revenue for a general purpose as opposed to a specific purpose is key to deciding whether the supermajority provisions of I-601 are triggered. This bill would implement a $10 surcharge on special endorsements for motorcycle driver's licenses. This surcharge would be distributed into three different accounts: The bulk would be placed into an account that is used for motorcycle safety and education; another portion would be placed into an account for driver's licensing costs and traffic safety; and the final portion would be placed into an account for use on highway purposes and vehicle safety.

The President reminds the body that neither the term assigned to the revenue action nor the name of the account into which funds are to be deposited is controlling for this analysis. Instead, the President believes it is the nexus between the tax or fee to be charged and the limited purpose or purposes for which the proceeds may be spent. The more direct the connection between the money collected and the narrow purpose for which it may be spent, the more likely it is that this is a specific fee, not a general tax, and the supermajority provisions of I-601 do not come into play. On the other hand, where the purposes for which the proceeds may be spent are broad and the connection between the revenue and its purpose is less direct, it is more likely the action would be a general tax which would need a supermajority vote for final passage.

In a recent ruling, the President determined that a fee collected for waste tire prevention had been converted into a more general tax because the purpose for which the amount was collected had been greatly expanded to the point where the connection to the fee's original purpose was no longer maintained. Despite retaining the name of the fee, the resulting tax would have had little connection to waste tire prevention and could instead be used for any transportation purpose. This broke the direct connection between the collection and the purpose for which it was being used, impermissibly broadening the former limitation on use of proceeds, and therefore put it under the supermajority requirements of I-601.

By contrast, this measure's proposed surcharge can be likened to a user fee, with a fairly direct nexus between the fee to be collected and the purposes for which it may be spent. Although the surcharge will be placed into several accounts, some of which are more limited in their use than others, all have a sufficient connection to the fee collected from motorcycle driver's license applicants: Motorcycle safety is a very direct connection, as is the use of the proceeds to defray

the costs of actual license issuance. Likewise, the use for highway purposes and vehicle safety is sufficiently limited and connected to motorcycle drivers, although the President would caution that this final purpose seems to be getting on the outside edge of what could reasonably be included in this analysis.

For these reasons, Senator Oemig's point is not well-taken, and passage of this bill will require a simple majority vote of this body, 25 votes." (March 13, 2007)

I-601: Nexus Between Purpose & Revenue

"Senator Haugen has raised the question as to whether Substitute Senate Bill 5080 takes a simple majority or a two-thirds vote on final passage, because of a prior ruling of the President on this measure. In that ruling, the President held that this measure in a previous form would take a two-thirds vote, under provisions of the law commonly referred to as Initiative 601, because it converted a specific fee into a general tax. Senator Haugen believes that adoption of the latest striking amendment to the bill changes this analysis, and has asked for a ruling based on this new language.

The President believes this is an important issue and wants to be clear in his explanation, because it involves the interplay of two earlier rulings, including one on an earlier version of this same bill. The President knows that this can be a complicated area of procedure and takes his role in this matter very seriously. In addition to answering the specific issue before us, this ruling may also provide guidance for the body in drafting for the future, and he appreciates the body's patience as he issues this ruling.

Although the mechanics of the law may be complex, the President believes that the primary limitation in this collective law is clear: The legislature may not take action which raises state revenue unless the enacting legislation is passed with a two-thirds vote. Over the years, a body of parliamentary precedent has developed within the Legislature to differentiate between a specific fee, which takes only a simple majority vote, and a general tax increase, which would take a supermajority vote. While this is a reasonable distinction, it is not without its limits, and various rulings over the years should not be viewed by the body as an invitation to play games with revenue, names, and accounts to obfuscate the true nature of a tax increase in hopes that this will somehow circumvent the clear provisions of the law. Such machinations elevate form over substance and make a sham of the plain language of I-601.

With this in mind, the President reiterates that it is neither the name given the revenue action nor the name assigned to an account which is controlling. Calling something a fee when there is no nexus between its collection and how it is to be spent does not make it a fee for purposes of this analysis, regardless of the name of the account into which the proceeds are placed. Simply put, there must be a reasonable connection between the fee, those paying it, and the purpose on which its proceeds may be spent. Failing this, it is a tax, and a supermajority vote is required.

Applying this to the measure before us, the previous language in the bill converted a specific fee into a general tax by impermissibly broadening the purpose for which it could be spent—indeed, over time, it would have completely done away with any reasonable limitation on the proceeds, severing the connection that previously existed between a specific fee and a specific purpose. By contrast, the language before us now essentially maintains the original purpose, but would then add another purpose—road wear related maintenance on highways.

The question then becomes whether a $1 fee collected on the sale of tires may be used for both waste tire removal purposes and road wear maintenance on highways? The President believes that there is a logical connection between a fee collected on tires and these two purposes, and thus the fee remains a fee under the new language, it is not converted to a more general tax.

In so ruling, the President believes it would be instructive to issue a few cautionary notes. First, there is language in the bill relating to how and when proceeds would be transferred between accounts. It is important to understand that the mechanism for transfer between accounts has no bearing on the initial determination as to whether a revenue action is a fee or tax in the first place. The President will always begin by looking for a connection between the fee, those paying it, and the limited purpose for which it can be spent; accounts and transfers between them are not necessarily controlling for such an analysis. Likewise, while an intent section may be helpful, it simply provides guidance in looking at the measure as a whole, and it will not otherwise change the plain language of the substantive provisions of the bill.

Second, while the President cannot give a specific number of purposes which would be too many, thereby breaking the nexus between a fee and the limited use of its proceeds, it does seem that an excessive number of purposes tied to one limited fee would indicate that it is no longer a fee, but is instead a general tax increase. At some point, there might be so many purposes stated that the distinction between a fee and a tax increase is lost. The President issues these cautions not as a comment upon any policy choice made by this body, but simply as guidance for the future in meeting the parliamentary constraints of I-601.

For these reasons, the President responds to Senator Haugen's inquiry by ruling that only a simple majority of this body, 25 votes, is needed for final passage of this measure as recently amended by striking amendment 302." (April 4, 2007).

I-601: Past Precedent/Multiple Purposes

In ruling upon the point of inquiry raised by Senator Honeyford that Engrossed Second Substitute House Bill 1359 takes a two-thirds vote on final passage under statutes enacted by Initiative 601 because it increases revenue, the President finds and rules as follows:

The President finds that determining whether a revenue measure takes a simple majority or a 2/3 vote is one of the most difficult rulings to make. In part, this is because the initiative was poorly written, and it does not clearly set forth definitions as to various categories of revenue. Therefore, the President must look to several sources of authority when making rulings, starting

with the plain language of the law itself, court rulings if pertinent, and previous parliamentary rulings of this body.

The President believes that, although the law does allow for revenue increases, it is meant to limit these increases, and he has therefore endeavored to rule very narrowly in determining when a new revenue source is a fee, needing only a simple majority vote, rather than a tax needing a 2/3 vote to pass. In previous rulings, the President has maintained that there needs to be a relationship, or nexus, between the source of the revenue and the purposes for which its proceeds may be used. The President acknowledges that this determination can be somewhat subjective and difficult to determine absolutely. The situation is complicated further by the need of the body to tie together complicated matters of policy with the complexities of budgeting, all while trying to work within the constraints of this initiative and the constantly evolving body of case law and parliamentary authority. With this in mind, the President suggests that there is a need for the Legislature to put into law certain definitions as to taxes and fees for the purpose of raising revenue.

In the case before us, the President takes note of a similar ruling in 2001 where an increase in recording fees for real estate documents was used to fund a specific program on low-income housing. The President must note again, at this point, that just calling something a specific program but using the revenue for a very broad purpose would be improperly gaming the law, and the President, as he has in the past, would rule such an action as being, in fact, a tax which would need a 2/3 vote for passage.

The bill before us raises revenue through an increase in the recording fees on real estate documents to fund a program to provide housing for the homeless. This is a classic example of walking the fine line between a fee and a tax, and a specific versus a broad purpose. The President is concerned that the entirety of the bill's language could allow the revenue raised to be used for multiple purposes, such as providing many very worthy yet additional services that may not be directly related to housing. Because this is all new law, it is unclear precisely how, in practice, all of the proceeds will ultimately be used. Nonetheless, the President believes that he must rely on past precedent and defer to stated intent rather than speculation. The President therefore finds, in keeping with a past ruling on this same subject, that the revenue source is sufficiently limited so as to be considered a fee for a dedicated purpose.

For these reasons, the measure will take only a simple majority for final passage, 25 votes." (April 12, 2007).

Title-Only Bills: Scope & Object

"In ruling upon the point of order raised by Senator Schoesler that the proposed substitute is beyond the scope and object of Senate Bill 6156, the President finds and rules as follows:

The underlying bill falls into the category of what is commonly known as a title-only bill. These are measures which are introduced without any substantive provisions, but instead contain only

generalized language which may be replaced by more specific provisions at a later date. It is fair to say that they are used as a tactic for meeting or even getting around applicable legislative deadlines. Whatever the Constitutional and legal challenges posed by such measures may be, the President must decide the parliamentary propriety of such measures, at least as raised by this scope and object challenge.

The President believes this is a matter of first impression. In the 31 years the President has served in various capacities, he is unaware of this matter ever having been raised. Likewise, a review of past precedent of this body reveals no instance where this specific issue has been raised or decided. As a result, the President must provide a thorough rationale both in deciding this particular point and in providing guidance for the body as to future practice.

Applying traditional scope and object analysis to a title-only measure is of limited utility, and it quickly becomes problematic. On the one hand, because there is no substantive language in the bill, it can be argued that almost any subject matter could be properly included except as limited by the title itself. Such an argument is tenuous, however, because this body has never relied solely on titles in determining scope and object. On the other hand, another argument, and one which is in keeping with past precedent, is to restrict the subject matter to that set forth in the underlying bill, as limited as that may be. Under such an analysis, the proposed substitute before us would be outside the scope and object of the underlying bill.

The President believes, however, that he has a duty to this body to ensure that it is able to conduct and complete its business, and that it is not unreasonable for the body to rely on its past practices when this has been the unchallenged tradition for such a long period of time. Accordingly, the President rules that the body may so substitute language which is germane to the overall subject expressed in title-only bills for the remainder of this Session.

In so holding, the President recognizes that this ruling does not harmonize past rulings with respect to scope and object, but the President believes the greater equities weigh in favor of deferring to past practice. It may be that the body finds it desirable to change its rules for future sessions, or to be more specific as to title-only bills for the future, or even abandon the practice altogether. However the body chooses to orders it business for future sessions, the President hopes that the body will be cognizant of the limited latitude granted the practice for this Session only.

For these reasons, the President finds that the substitute bill may be considered, but cautions the body as to its use of title-only measures in future Sessions." (April 21, 2007).

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